

Eric Fryson

From: Hayes, Annisha <AnnishaHayes@andrewskurth.com>
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To: Filings@psc.state.fl.us
Subject: Docket No. 130040-EI: WCF HUA's Motion to Modify Controlling Dates & Discovery Procedures Applicable to Rebuttal
Attachments: HUA Motion to Modify Dates and Discovery.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Kenneth L. Wiseman
Andrews Kurth LLP
1350 I Street, NW
Suite 1100
Washington, DC 20005
202-662-2715 (phone)
202-662-2739 (fax)

b. Docket No. 130040-EI.

c. Document being filed on behalf of WCF Hospital Utility Alliance (WCF HUA).

d. There are a total of 8 pages.

e. The document attached for electronic filing is WCF HUA's Motion to Modify Controlling Dates and Discovery Procedures Applicable to Rebuttal.
(See attached HUA Motion to Modify Dates and Discovery.pdf)

Thank you for your attention and cooperation to this request.

Regards.
Annisha Hayes
AndrewsKurth, LLP
1350 I Street, NW
Suite 1100
Washington, DC 20005
202-662-2783
202-662-2739 (fax)
ahayes@andrewskurth.com
www.andrewskurth.com

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa
Electric Company

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§
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§

Docket No.: 130040-EI
Filed: June 11, 2013

WCF HOSPITAL UTILITY ALLIANCE
MOTION TO MODIFY CONTROLLING DATES AND DISCOVERY PROCEDURES
APPLICABLE TO REBUTTAL

Pursuant to Rule 28-106.204 of the Florida Administrative Code, the WCF Hospital Utility Alliance (“HUA”) hereby moves for an order to make two modifications to the dates and procedures for obtaining discovery concerning Tampa Electric Company’s (“Tampa Electric’s”) rebuttal testimony that is to be filed on July 31, 2013. The modifications HUA seeks, with an exception for depositions, do not adjust the discovery deadline or any other procedural dates contemplated by the current procedural schedule. The two proposed modifications are necessary if intervenors are going to be provided a realistic opportunity to obtain answers to interrogatories and responses to requests for productions of documents with respect to Tampa Electric’s rebuttal testimony. The current schedule and procedures effectively provides no opportunity to obtain those types of discovery. HUA is authorized to represent that this motion is supported by the Citizens of the State of Florida (“Citizens”), the Federal Executive Agencies (“FEA”), the Florida Retail Federation (“FRF”) and the Florida Industrial Power Users Group (“FIPUG”). In support hereof, HUA states as follows:

1. On April 5, 2013, Tampa Electric filed for a base rate increase, and in that filing, included its minimum filing requirements (“MFRs”) and direct testimony and exhibits for thirteen witnesses.

2. By Order No. PSC-13-0150-PCO-EI, issued April 8, 2013 (“Order Establishing Procedure”) the following deadlines and procedures were established that are relevant to this Motion: (1) Tampa Electric was ordered to submit its rebuttal testimony and exhibits by July 31, 2013; (2) the discovery deadline was set at August 26, 2013; and (3) and for discovery requests related to matters addressed in Tampa Electric’s rebuttal testimony, discovery responses were ordered to be served within 15 days of receipt of the discovery request. Therefore, the last day that discovery requests could have been served in the forms of interrogatories and requests for production of documents that would have provided the requesting party discovery responses by the August 26 discovery deadline was August 9, 2013, nine days after the filing date for Tampa Electric’s rebuttal testimony.

3. Order No. PSC-13-0203-PCO-EI, issued May 17, 2013, (“First Order Revising Order Establishing Procedure”) modified the foregoing procedures in one critical respect. Due to a modification of the date when intervenor testimony would be due, the date for Tampa Electric to file its rebuttal testimony was moved from July 31, 2013 to August 8, 2013. Notwithstanding that modification, the order retained both the August 26, 2013 as the deadline for discovery and the rule that provides for Tampa Electric serving its discovery responses related to its rebuttal testimony within 15 days of its receipt of a discovery request.

4. The current due date for Tampa Electric’s rebuttal testimony, August 8, 2013, is a Thursday. Therefore, under the First Order Revising Order Establishing Procedure, the last day that discovery requests can be served in the forms of interrogatories and requests for production of documents that will provide the requesting party discovery responses by the August 26 discovery deadline still is Friday, August 9, 2013, as it was under the Order Establishing

Procedure. However, as of now, it is just one day after parties are served with Tampa Electric's rebuttal testimony.

5. Considering the potential breadth of Tampa Electric's rebuttal evidence (potentially responding to testimony submitted by Citizens, FEA, FIPUG, FRF and HUA), one day is not a sufficient time period to complete that task. As the Commission is well aware, rebuttal testimony and exhibits often can be as voluminous, or even more so, than a utility's direct case. Testimony also may be offered in rebuttal by witnesses who did not provide prior direct testimony. In addition, even though Tampa Electric will serve its rebuttal testimonies and exhibits by e-mail, the process of printing that voluminous amount of material could well take several hours in itself. Thus, as a practical matter, intervenors will have less than 24 hours to read the entirety of the testimonies and exhibits of Tampa Electric's rebuttal witnesses, draft interrogatories and requests for production of documents, and serve them by 5:00 PM on Friday, August 9, the last time when they can serve those discovery responses, under the First Order Revising Order Establishing Procedure, and get responses by the August 26 discovery deadline. It simply is unrealistic to think that intervenors will be able to accomplish those tasks in anything approaching a comprehensive manner.

6. The ramifications of the procedures now in place extend beyond an inability to obtain answers to interrogatories and requests for production of documents. A standard practice in depositions is to question a witness concerning answers to interrogatories, and documents that have been produced in discovery, to attempt to test the witness' reasoning, as an example, against pre-existing documents. That method is used to understand the merits, or lack of merit, to the reasoning the witness relies upon for his or her testimony. In order to conduct effective depositions concerning Tampa Electric's rebuttal evidence, parties need sufficient time to review

Tampa Electric's witnesses' responses to interrogatories and document requests in order to test the witnesses' testimony. Without the necessary time to obtain, let alone review, answers to interrogatories and documentary responses, intervenors effectively will be denied an opportunity to conduct effective depositions, and ultimately their very ability to challenge Tampa Electric's rebuttal evidence. Intervenors thus will be prejudiced because they will be unable to obtain discovery, and will be unable to fully and properly prepare for hearing, to a level that is consistent with their due process rights.

7. HUA believes that two minor modifications of the procedural rules applicable to discovery concerning Tampa Electric's rebuttal testimony will cure these problems. First, HUA requests that the Order Establishing Procedure and First Order Revising Order Establishing Procedure be revised to retain the August 26, 2013 deadline for responses to interrogatories, requests for admission and requests for production of documents but provide that Tampa Electric's responses to those forms of discovery related to matters addressed in its rebuttal testimony must be served within 10 days of receipt of the discovery request. HUA secondly requests that the deadline for depositions of Tampa Electric's witnesses be extended for four (4) days up to and including August 30, 2013. HUA believes both revisions are necessary to allow intervenors a reasonable opportunity to obtain adequate discovery concerning Tampa Electric's rebuttal evidence prior to the hearing. By extending the deadline to conduct depositions from August 26, 2013 to August 30, 2013, intervenors will have adequate time to review Tampa Electric's rebuttal evidence, draft interrogatories and documents requests concerning such evidence, receive responses from Tampa Electric, review Tampa Electric's responses, and prepare for depositions of Tampa Electric's witnesses. HUA submits that providing the additional few days for depositions also will likely make the hearing more efficient. HUA also

submits that the modifications proposed here will not impose an undue burden on Tampa Electric.

8. To accomplish the foregoing requested modifications, HUA proposes to revise the last sentence of Section V.A(5) of the Order Establishing Procedure as follows: "For discovery requests related to matters addressed in the utility's rebuttal testimony, discovery responses shall be served within 10 days of receipt of the discovery request." HUA also requests that Section V.A(1) of the Order Establishing Procedure be revised as follows: "Discovery, excluding depositions, shall be completed by August 26, 2013. Depositions shall be completed by August 30, 2013." By these changes, the last day that Intervenors will be able to serve discovery would be August 16, 2013. Intervenors thus would have eight days (rather than one) to review and draft discovery concerning Tampa Electric's rebuttal testimony. An eight-day timeframe is a day less than Intervenors were provided under the Order Establishing Procedure. HUA believes that eight days will provide it sufficient time to conduct the necessary discovery.

9. HUA has conferred with Tampa Electric. Tampa Electric has indicated that it opposes this Motion and will file a written response.

WHEREFORE, HUA hereby requests that this Motion to Modify the Controlling Dates and Discovery Procedures be granted.

Respectfully submitted,

/s/ Kenneth L. Wiseman

Kenneth L. Wiseman

Mark F. Sundback

Lisa M. Purdy

William M. Rappolt

Blake R. Urban

Andrews Kurth LLP

1350 I Street NW, Suite 1100

Washington, D.C. 20005

Phone: (202) 662-2700

Fax: (202) 662-2739

Qualified Representatives for the WCF Hospital Utility Alliance

June 11, 2013

**CERTIFICATE OF SERVICE
DOCKET NO. 130040-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by electronic mail, U.S. Mail, or Federal Express, this 11th day of June, 2013, to the following:

Tampa Electric Company

Gordon L. Gillette
Paula K. Brown
P.O. Box 111
Tampa, FL 33601-0111
Phone: (813) 228-1444
Fax: (813) 228-1770
Email: Regdept@tecoenergy.com

Florida Industrial Power Users Group

Jon C. Moyle, Jr.
c/o Moyle Law Firm
118 North Gadsden Street
Tallahassee, FL 32301
Phone: (850) 681-3828
Fax: (850) 681-8788
Email: jmoyle@kagmlaw.com

Office of Public Counsel

J.R. Kelly
P. Christensen
J. McGlothlin
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32393-1400
Phone: (850) 488-9330
Email: Christensen.patty@leg.state.fl.us

Ausley Law Firm

James D. Beasley
P.O. Box 391
Tallahassee, FL 32302
Phone: (850) 224-9115
Fax: (850) 222-7560
Email: jbeasley@ausley.com

Florida Public Service Commission

Office of the General Counsel
Martha Barrera
Martha Brown
Suzanne Brownless
2450 Shumard Oak Boulevard
Tallahassee, FL 32399

Charles Misted

AARP, Associate State Director
200 West College Avenue
Tallahassee, FL 32301
Phone: (850) 577-5190
Email: CMilsted@aarp.org

Florida Retail Federation

100 East Jefferson Street
Tallahassee, FL 32301
Phone: (850) 222-4082
Fax: (850) 226-4082

Florida Consumer Action Network

Bill Newton
3006 W. Kennedy Blvd Suite B
Tampa, FL 33609
Phone: (813) 877-6712
Email: billn@fcan.org

Macquarie Capital (USA) Inc.
Sunny Kwak
Andrew Weisel
125 West 55th Street, Level 23
New York, NY 10019
Phone: (212) 231-1683
Email: Sunny.Kwak@macquarie.com

Gardner Law Firm
Robert Scheffel Wright
John T. La Via
1300 Thomaswood Drive
Tallahassee, FL 32308
Phone: (850) 385-0070
Fax: (850) 385-5416
Email: schef@gbwlegal.com

Federal Executive Agencies
Lt. Col. Gregory J. Fike
AFLOA/JACL-ULFSC
139 Barnes Drive, Suite 1
Tyndall Air Force Base, Florida 32403
Phone: (850) 283-6347
Fax: (850) 283-6279
Email: Gregory.fike@tyndall.af.mil

/s/ Kenneth L. Wiseman
Kenneth L. Wiseman